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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,016	07/25/2001	Jacques Bourdel		6235

7590 08/04/2003

John C Linderman  
McCormick Paulding & Huber  
CityPlace II  
185 Asylum Street  
Hartford, CT 06103-3402

[REDACTED] EXAMINER

MANOHARAN, VIRGINIA

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1764

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DATE MAILED: 08/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/890,016	BOURDEL, JACQUES	
	Examiner Virginia Manoharan	Art Unit 1764	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
<b>Period for Reply</b>			
<b>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</b>			
<ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>			
<b>Status</b>			
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>24 January 2003</u> .			
2a) <input checked="" type="checkbox"/> This action is <b>FINAL</b> .      2b) <input type="checkbox"/> This action is non-final.			
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.			
<b>Disposition of Claims</b>			
4) <input checked="" type="checkbox"/> Claim(s) <u>1-28</u> is/are pending in the application.			
4a) Of the above claim(s) _____ is/are withdrawn from consideration.			
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.			
6) <input checked="" type="checkbox"/> Claim(s) <u>1-28</u> is/are rejected.			
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.			
8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.			
<b>Application Papers</b>			
9) <input type="checkbox"/> The specification is objected to by the Examiner.			
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).			
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.			
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.			
<b>Priority under 35 U.S.C. §§ 119 and 120</b>			
13) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) <input type="checkbox"/> All    b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.			
14) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.			
15) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.			
<b>Attachment(s)</b>			
1) <input type="checkbox"/> Notice of References Cited (PTO-892)		4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____	
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)	
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____		6) <input type="checkbox"/> Other: _____	

Claims 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention because of the same reasons as set forth e.g., at page 2, section b.2; section C. of the previous Office action.

(Since applicant did not address these rejections, it is assumed he is acquiescing therein).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-6, 11-16 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bourdel in view of Strashun et al or Morgan et al.

The above references are applied for the same combined reasons as set forth at pages 4-6 of the previous Office action.

Claims 7-10, 17-24 and 27-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 4 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Applicant's arguments filed April 24, 2003 have been fully considered but they are not persuasive.

Applicant following arguments such as:

"Strashun or Morgan teach giving a liquid and an aqueous dispersion, respectively, to be dehydrated an initial foam consistency for application that is to be maintained throughout dehydration i.e., no crushing. Bourdel is silent on the issue of creating foam. Therefore, these references taken alone or in combination do not teach or suggest the subject matter of claim 1, i.e., foaming a fluid matter for application and then crushing it during dehydration..... There is no motivation to combine Strashun or Morgan with Bourdel as suggested by the Examiner. . . As such, Strashun and Morgan teach away from the present subject matter of claims 1 and 5 that recite that the fluid foam matter is foamed for application, but then it is crushed during dehydration..." are not persuasive of patentability because of the following reasons:

Applicant is arguing the references individually where the rejection is based on a combination of references. Bourdel, not Strashun or Morgan, was cited to teach the argued crushing and the means for crushing (claim 5). In like manner, Strashun or Morgan, not Bourdel, was applied to teach that creating foam and the means for creating a foam (claim 5) is not an unobvious nor is it evidence of criticality in the art. Bourdel's disclosure at col. 8, lines 1-4 would at least be suggestive of crushing during dehydration. Furthermore and contrary to applicants' assertion, there is motivation for combination and the references do not teach away from the present subject matter.

Bourdel at col. 9, lines 35-40 disclosure of an electric bubble breaking device 55 would be suggestive of foaming, with the device serving "... to fluidize as appropriately

as possible the slurry at the moment when it is deposited on the disk, in such a manner as to form a uniform thin layer. .." The step of gasification as in Bourdel may even be omitted for dehydration as taught by Strashun. Note column 5, lines 15-40.

Thus, in the absence of anything, which may be "new" or "unexpected result", a *prima facie* case of obviousness has been established by the art and has not been rebutted.

Unexpected results must be established by factual evidence. Mere arguments or conclusory statements in the specification, appl' amendments, or the Brief do not suffice. In re Linder, 457 F.2d 506, 508, 173 USPQ 356, 358 (CCPA 1972). In re Wood, F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mrs. Marian Knode can be reached on (703) 308-4311. The fax phone

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numbers for the organization where this application or proceeding is assigned are (703) 872-9311 for regular communications and (703) 308-0651 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

V. Manoharan/dh

July 29, 2003

*V. Manoharan/dh  
July 29, 2003  
Art Unit 1764  
8/1/03*